director, Karuppiah, the applicant had assaulted one Rajasingam the then manager of the company. In the circumstances, it was thought that because of his hostile attitude the applicant would be a source of embarrassment to the company. These facts were not set out in the minutes of the directors' meeting, but appeared in the affidavits of the two directors.

Bearing in mind the accepted practice for articles of private companies to contain severe restrictions on the transfer of shares, I am not persuaded from the evidence disclosed in the cross-examination of the deponent that the directors' refusal to register the transfer of the shares has been dictated by anything except a *bona fide* view as to the interests of the company as they, the directors, see them.

The application is dismissed with costs.

Application dismissed.

Solicitors: *Morris Edgar & Co.*; *Joseph & Son.*

RE CHIN SWEE OON

[O.C.J. (Barakbah C.J., Ong & Gill JJ.) February 26, 1964]

[K.L. — Originating Motion No. 44 of 1963]

Advocate and Solicitor—Re-instatement of—Considerations in the light of its own facts—Advocates and Solicitors Ordinance, 1947, s. 34.

The applicant was struck off the Roll of Advocates and Solicitors in October 1957 for misappropriation of a client's money. After a lapse of six years he applied to be replaced on the Roll under section 34 of the Advocates and Solicitors Ordinance.

Held: after taking into account the applicant's age, that he had made full restitution, that he had been truly penitent, that he had the good name of his family to consider at all time, that he had for the past six years lived a blameless life, the Court was satisfied that there was no risk of a repetition of the same or any other offence when he resumed practice and there was no prejudice to the public interest.

[**Editorial Note:** *In re Robins* (2) an attorney having been struck off the Roll in the Easter Term 1859, for misappropriating to his own use money received from a client for a particular purpose, the Court, in 1865, allowed his name to be restored to the Roll, on affidavits of numerous attornies to his good character and conduct in the interval. *In re Pyke* (1) an attorney having been struck off the Roll, in order to be called to the Bar, was afterwards disbarred for professional mis-conduct; the decision of the Benchers being affirmed, on appeal, by the fifteen Judges. After the lapse of twenty years an application was made on his behalf to be re-admitted an attorney; but the Court refused the application, on the ground that there were no affidavits of professional persons and others as to his good conduct and character in the interval. But subsequently, on a second application, it appeared that since his disbarral he had lived a very secluded life; and he had filed affidavits two months before the application, stating every place at which he had lived, and no affidavits were filed impeaching his character. The Court then dispensed with the affidavits usually required of professional and other persons as to his good conduct and character in the interval, and re-admitted him without a re-examination.]

Cases referred to:—

(1) *In re Pyke* (1865), 34 L.J.Q.B. 121 & 220.

(2) *In re Robins* (1865), 34 L.J.Q.B. 121.

APPLICATION FOR RE-ADMISSION AS ADVOCATE & SOLICITOR.

Ng Ek Teong for the applicant.

Au Ah Wah for the Attorney-General.

R. C. M. Ryan for the Local Bar Committee.

R. R. Chelliah for the Bar Council.

Cur. Adv. Vult.

Barakbah C.J.: This is an application for an order that the applicant be replaced on the Roll of Advocates and Solicitors of Malaya under section 34 of the Advocates and Solicitors Ordinance, 1947.

Mr. Ryan on behalf of the Bar Committee filed his report under section 34(3) of the said Ordinance stating that no adverse reports had been received by the Local Bar Committee against the said applicant after he had been struck off the Roll. Therefore, he had no objection to the application.

Mr. Au Ah Wah, on behalf of the Attorney-General and Mr. R. R. Chelliah for the Bar Council objected on the ground that there were no affidavits filed regarding applicant's financial position. See the cases of *In re Pyke* (1) and *In re Robins.*(2) Also the Court had to take into consideration the interest of the public and the profession.

There is no question as to the gravity of the offence which led to the applicant being struck off the Rolls a little over six years ago. What this Court has to consider now is whether good cause has been shown for his re-instatement.

I think the case should be considered in the light of its own facts. Without professing to lay down any length of years as sufficient in respect of the amount of money involved, I am of opinion that the humiliation and exclusion from the practice of his profession has taught him an unforgettable lesson. In a sense he has expiated for his wrongdoing and, provided that we are satisfied that there will be no risk of a repetition of the same or of any other offence when he resumes practice, there will be no prejudice to the public interest.

I have taken into account that he is 59 years old, that he had made full restitution, that he has been truly penitent, that he has the good name of his family (including a daughter in active practice) to consider at all times, that in a town of not very great size like Ipoh he had for the past 6 years lived a blameless life or the contrary would have been known to the members of the local profession practising in the State of Perak, and that I do not consider it at all likely that he would prove unworthy of the trust which

by the decision of this Court we placed in him. For these reasons, I think the application should be allowed.

Ong and **Gill JJ.** concurred.

Application allowed.

LEE KAH WAH v. CHEAH PAIK YEAN & ANOR.

[O.C.J. (Hepworth J.) February 29, 1964]

[Penang — Divorce Petition No. 13 of 1962]

Divorce—Husband's petition on grounds of cruelty and adultery—Wife's cross-petition on grounds of cruelty, adultery and desertion—Discretion to make orders on both petitions—Divorce Ordinance, 1952, s. 9(2)(c).

The petitioner left the matrimonial home on February 3, 1960. On November 29, 1962, he presented this petition for divorce on the grounds of cruelty and adultery. On February 5, 1963 the respondent filed her answer charging the petitioner with cruelty, adultery and desertion. It was held that:

(i) the petitioner had failed to prove cruelty but had succeeded in proving that the respondent committed adultery with the co-respondent on April 28, 1962.

(ii) the respondent had failed to prove cruelty and adultery but had proved desertion without just cause on the part of petitioner on February 3, 1960.

(iii) the adultery of the respondent had not terminated the desertion of the petitioner on the ground that it had not been shown that the adultery, even if known, would have affected the petitioner's conduct.

On the question as to whether the petitioner had deserted the respondent without just cause,

Held: the spouse who leaves the matrimonial home is not necessarily the deserter. The criterion for assessing whether that spouse is justified in leaving is that the conduct of the spouse remaining must exceed such behaviour, vexatious and trying though it may be, as every spouse bargains to endure when accepting the other "for better of worse", although such conduct need not amount to a matrimonial offence, such as cruelty or adultery.

The finding that the petitioner had committed the matrimonial offence of desertion constituted a discretionary bar to granting a decree to the petitioner on the ground of the subsequent adultery of the respondent by virtue of section 9(2)(c) of the Divorce Ordinance, 1952.

By virtue of the finding that the petitioner had deserted the respondent without reasonable excuse the respondent was entitled to relief, but the adultery of the respondent constituted a discretionary bar to the granting of a decree by virtue of section 9(2) of the Divorce Ordinance. On the question as to whether the discretion should be exercised in favour of the petitioner or the respondent,

Held: the Court when arriving at a decision must take into consideration:

(i) the position and interest of the child of the marriage,

(ii) the interest of the party with whom the petitioner has committed adultery with special regard to their future marriage,

(iii) the question whether, if the marriage be not dissolved, there is a prospect of reconciliation between the spouses,

(iv) the interest of the petitioner particularly as regards allowing him to remarry and live respectably, and finally,

(v) the interest of the community at large, judged by maintaining a true balance between respect for the binding sanctity of marriage and the social considerations which make it contrary to public policy to insist on the maintenance of a union which has utterly broken down.

In all the circumstance of this case, the discretion of the Court should be exercised in favour of both parties.

Cases referred to:—

(1) *Buchler* v. *Buchler* [1947] 1 All E.R. 319 at p. 320.

(2) *Herod* v. *Herod* [1939] P. 11.

(3) *Blunt* v. *Blunt* [1943] A.C. 517.

(4) *O'Brien* v. *O'Brien* [1950] W.N. 330.

DIVORCE PETITION.

S. Thillaimuthu for the petitioner.

Lee Kok Liang for the respondent.

Cur. Adv. Vult.

Hepworth J.: The petitioner, Lee Kah Wah, is now a factory supervisor and resides at No. 117, Patani Road, Penang.

The respondent, Cheah Paik Yean, is a housewife and now resides at No. 14, Burmah Lane, Penang.

The petitioner and the respondent were married in the Registry of Civil Marriages, Penang, under the provisions of the Civil Marriage Ordinance, 1952, on the 25th February, 1959. Thereafter they lived and cohabited at No. 4, Tanjong Tokong Road, Penang, and then at No. 27-P, Lorong Kampong Melayu, Penang.

There is one child of the said marriage now living namely Lee Weng Thong, a male, who was born on the 11th February, 1960.

The co-respondent, Louis Lim's last known address is care of the Manager's House, Kepong Dredging Co. Ltd., Jinjang, Selangor, but his present whereabouts is not known. He was served by advertisement and did not enter an appearance.

The petitioner charges the respondent with cruelty and adultery. In her answer the respondent charges the petitioner with cruelty, adultery and desertion. On these grounds the petitioner and the respondent respectively pray for the dissolution of the marriage.

The petitioner left the matrimonial home, at that time at No. 27-P, Lorong Kampong Melayu, on the 3rd February, 1960, and it will be seen from this that the marriage lasted less than one year.

The petitioner in support of his charge of cruelty pleaded 17 different acts on the part of the respondent which he alleged amounted to cruelty, fourteen of them between the 13th March, 1959, and the 8th August, 1959, and three between the 26th December, 1959, and the 3rd February, 1960.